

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LUCKENBACH TEXAS, INC.,
Plaintiff

v.

PAUL ENGEL,
Defendant

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No. 1:19-CV-00567-DH

ORDER

Before the Court is the parties' Joint Advisory on Disputed Motions in Limine, Dkt. 122. After considering the parties arguments in the joint advisory, the motions in limine previously filed, Dkts. 92, 98, and the parties' arguments at the final pretrial conference, the Court makes the following rulings.

I. PLAINTIFF'S DISPUTED MOTIONS IN LIMINE

A. Delay: Evidence, argument concerning delay by Plaintiff

The Court **DENIES** Plaintiff's motion in limine regarding delay.

B. Incontestability: Evidence, argument denying that Plaintiff's mark is incontestable

The Court **GRANTS** Plaintiff's motion in limine regarding incontestability.

C. TTAB Proceedings: Evidence, argument concerning current proceedings at the US Patent and Trademark Office before the Trademark Trial and Appeal Board

The Court **GRANTS** Plaintiff's motion in limine regarding the current TTAB proceedings.

D. Luckenbach's Mark as Geographic: Evidence, argument that Luckenbach's mark is not entitled to protection because its name is instead the name of a "town" or a geographical location

The Court **DENIES** Plaintiff's motion in limine regarding Plaintiff's mark as describing a geographic location.

II. DEFENDANT'S DISPUTED MOTIONS IN LIMINE

A. Testimony from Dr. Wind

The Court **DENIES** Defendant's motion in limine regarding Dr. Wind.

B. Description or characterization of Plaintiff's trademarks as being "incontestable."

The Court **GRANTS** Defendant's motion in limine regarding references to Plaintiff's trademarks as being "incontestable."

C. References to the source of payment of either party's attorney's fees, costs, or expenses in this case

The Court **GRANTS** Defendant's motion in limine regarding references to the source of payment of either party's attorney's fees, costs, or expenses in this case.

D. References to counsel in this case's representation of the same or other parties in other lawsuits

The Court **GRANTS** Defendant's motion in limine regarding references to counsel in this case's representation of the same or other parties in other lawsuits.

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Accordingly, the Court **GRANTS IN PART and DENIES IN PART** the parties' disputed motions in limine, Dkt. 122, as set out above. The Court **DISMISSES AS MOOT** the parties' previously filed motions in limine, found at Dkt. 92 and Dkt. 98.

IT IS FINALLY ORDERED that no order on admissibility of any evidence is made in this order. The Court **ORDERS** counsel to approach the bench before directly or indirectly presenting any evidence or argument regarding the subject matter on which the Court granted the above motions in limine. The parties are required to proffer the evidence and make timely objections, as the sole purpose of this order is to indicate to the lawyers when they should approach the bench on occasions before going into what may be admissible or inadmissible evidence.

SIGNED October 20, 2022.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATGE JUDGE